

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE R.J. ARMSTRONG LIVING TRUST, a Nevada testamentary entity, and DAVID C. ARMSTRONG, an individual,

Case No.: 3:22-cv-00375-ART-CSD

Order

Re: ECF No. 99

Plaintiffs

V.

SUSAN HELEN ARMSTRONG HOLMES,
an individual,

Defendant

SUSAN HELEN ARMSTRONG HOLMES,
an individual.

Counterclaimant

THE R.J. ARMSTRONG LIVING TRUST, a Nevada testamentary entity, and DAVID C. ARMSTRONG, an individual,

Counter-Defendants

Before the court is a motion concerning a discovery dispute filed by Plaintiffs/Counter-Defendants the R.J. Armstrong Living Trust and David C. Armstrong and third party Mylin Rosales filed pursuant to the court's Civil Standing Order. (ECF No. 99.)

Defendant/Counterclaimant Susan Holmes has filed a response. (ECF No. 101.)

Ms. Rosales is Armstrong's on-again-off-again romantic partner. She was served with an amended notice of deposition and subpoena duces tecum on January 23, 2024, with her deposition noticed for February 26, 2024. She is represented by Mr. Stephenson, who is also counsel for the Trust/Armstrong. The subpoena requests the production of five categories of

1 documents. Ms. Rosales and the Trust/Armstrong have objected to each of the requests. In this
 2 motion, they ask that the subpoena be quashed. They also appear to request, in the alternative,
 3 that a protective order be issued.

4 For the reasons set forth below, the motion is granted in part and denied in part.

5 **I. LEGAL STANDARD**

6 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
 7 party’s claim or defense and proportional to the needs of the case, considering the importance of
 8 the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant
 9 information, the parties’ resources, the importance of the discovery in resolving the issues, and
 10 whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R.
 11 Civ. P. 26(b)(1). “Information within this scope of discovery need not be admissible in evidence
 12 to be discoverable.” *Id.*

13 “On motion or on its own, the court must limit the frequency or extent of discovery
 14 otherwise allowed by these rules or by local rule if it determines that: ... (iii) the proposed
 15 discovery is outside the scope permitted by Rule 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C).

16 “A party or person from whom discovery is sought may move for a protective order” and
 17 “[t]he court may, for good cause, issue an order to protect a party or person from annoyance,
 18 embarrassment, oppression or undue burden or expense[.]” Fed. R. Civ. P. 26(c)(1). This
 19 includes, for example, orders “forbidding the disclosure or discovery;” “specifying terms ... for
 20 the disclosure or discovery;” “forbidding inquiry into certain matters, or limiting the scope of
 21 disclosure or discovery to certain matters.” Fed. R. Civ. P. 26(c)(1)(A), (B), (D).

22 In addition, “[o]n timely motion, the court for the district court where compliance is
 23 required must quash or modify a subpoena that: ... (iii) requires disclosure of privileged or other

1 protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden.”
 2 Fed. R. Civ. P. 45(d)(3)(A)(iii)-(iv).

3 **II. DISCUSSION**

4 Preliminarily, the court will address the meet and confer efforts of counsel. Counsel for
 5 the Trust/Armstrong and Ms. Rosales—Mr. Stephenson—states that he and Mr. Pyper (counsel
 6 for Holmes) have met and conferred over this dispute at least four or five times, via email and
 7 telephonically, commencing in August of 2023 when Mr. Pyper conveyed his intention to take
 8 Ms. Rosales’ deposition. (ECF No. 99 at 2.) Under the court’s Civil Standing Order, there should
 9 be a declaration attached as an exhibit that details the meet and confer efforts undertaken to
 10 resolve the dispute. (ECF No. 4 at 3.) Mr. Stephenson’s statements are contained within his brief
 11 and not in a declaration attached as an exhibit to the motion. Moreover, the statements do not
 12 provide *any detail* about the meet and confer process. Counsel are reminded that under both the
 13 Civil Standing Order and Local Rule IA 1-3(f), they are required to meet and confer in a good
 14 faith effort to resolve their dispute **in person, via videoconference or via telephone.** The mere
 15 exchange of letters, voicemails, or emails does not satisfy the meet and confer requirement.

16 The “law” section of the brief filed by the Trust/Armstrong and Ms. Rosales discusses a
 17 party seeking an order to compel discovery. Curiously, the motion states that Ms. Rosales is
 18 moving to compel, that she has not made an attempt to meet her burden, and that the burden then
 19 shifts to her and the Trust to show why discovery should not be permitted. Ms. Rosales is not
 20 moving to *compel* discovery, but to quash or modify a subpoena and/or for a protective order.

21 Next, the motion is filed by Rosales as well as the Trust/Armstrong. Ms. Rosales
 22 certainly has standing to bring the motion. A party, such as the Trust/Armstrong, “lacks standing
 23 under [Rule 45] to challenge a subpoena issued to a non-party unless the *party* claims a personal

1 right or privilege with respect to the documents requested in the subpoena.” *G.K. Las Vegas Ltd.*
2 *Partnership v. Simon Property Group, Inc.*, No. 2:04-cv-0119-DAE-GWF, 2007 WL 119148, at
3 *4 (D. Nev. Jan. 9, 2007) (emphasis added). “A party’s objection that the subpoena issued to the
4 non-party seeks irrelevant information or imposes an undue burden on the non-party are not
5 grounds on which a party has standing to move to quash a subpoena issued to a non-party[.]” *Id.*

6 Similarly, a *party* may not move for a protective order or move to quash a subpoena to
7 protect the interests of a non-party. Instead, a party may only move to protect its own interest
8 affected by discovery sought from the non-party. *Id.* at *3.

9 The Trust/Armstrong have not established that they have standing to quash the subpoena
10 or seek a protective order; therefore, the motion is denied as to the Trust/Armstrong.

11 Ms. Rosales seeks an order quashing the subpoena for her to testify and produce
12 documents in its entirety based on the argument that she does not have any material or relevant
13 information to provide about this case. She believes that the only reason she is being deposed is
14 to inflict pain and embarrassment upon Armstrong, with whom she is no longer in a romantic
15 relationship.

16 The scope of discovery under Rule 45 is the same as that under Rule 26. *See Heard v.*
17 *Costco Wholesale Corp.*, No. 2:19-cv-00673-RFB-DJA, 2020 WL 515841, at *1 (D. Nev. Jan.
18 31, 2020). Rule 26 provides for broad and liberal discovery that is related to a party’s claim or
19 defense, but the rule limits discovery based on proportionality. Fed. R. Civ. P. 26(b)(1).

20 Ms. Rosales claims she does not have any information relevant to this case. Holmes, on
21 the other hand, contends Ms. Rosales will be able to shed light on the Trust’s financial condition
22 as of August 3, 2022, and in turn, why Holmes did not receive the agreed upon payment under
23

1 the settlement agreement. Since Ms. Rosales acknowledges that she was Armstrong's on-again-
2 off-again romantic partner, it is possible she has information relevant to the claims and defenses
3 being asserted in this case. Therefore, the motion is denied insofar as it seeks to quash the
4 subpoena in its entirety and prevent Ms. Rosales from being deposed. Mr. Pyper is cautioned,
5 however, that he must limit his questioning to areas which are relevant to the claims and
6 defenses proceeding in this action, and he shall not engage in a "fishing expedition."

7 The court will now address each of the categories of documents sought in the subpoena
8 and the objections asserted by Ms. Rosales. If the court denies a motion for protective order, it
9 may also issue an order compelling discovery. *See Fed. R. Civ. P. 26(c)(2); ProCare Hospice of*
10 *Nevada, LLC v. OneCare Hospice, LLC*, 340 F.R.D. 174, 179 (D. Nev. 2021).

11 Request for Production No. 1: A copy of all text messages that Ms. Rosales exchanged with
12 Armstrong between May 9, 2022 and August 3, 2022.

13 Objection: irrelevant, immaterial, harassing, overbroad, calls for personal intimate information
14 that has nothing to do with this case.

15 Ruling: The objection is overruled in part and sustained in part. The request is overbroad and
16 does clearly call for the production of information that is not relevant to the claims or defenses
17 being asserted here. This request will be limited to text messages that Ms. Rosales exchanged
18 with Armstrong between May 9, 2022 and August 3, 2022, that mention Susan Holmes or assets
19 of the Trust.

20 Request for Production No. 2: A copy of all text messages and emails that Ms. Rosales sent or
21 received from John Stephenson between May 9, 2022 and August 3, 2022.

22 Objection: irrelevant, immaterial, harassing, attorney-client privilege, attorney work product.

1 Ruling: The objection is sustained. Mr. Stephenson is the lawyer of Ms. Rosales and her
2 company, Galley, LLC. Therefore, the request seeks information protected by the attorney-client
3 privilege and/or work product doctrine.

4 Request for Production No. 3: A copy of any texts or emails sent or received regarding the sale
5 of the R.J. Armstrong Living Trust Yuba City, California real estate at any time during 2021 and
6 2022.

7 Objection: irrelevant, immaterial, harassing, calls for the production of confidential commercial
8 information.

9 Ruling: The objection is sustained in part and overruled in part. Holmes argues that she was
10 advised that the Trust would be selling a residential property in Yuba City, California, whose
11 sale proceeds would be combined with cash on hand to tender Holmes the agreed upon
12 \$650,000. Mr. Stephenson contacted her on July 25, 2022, and asked for additional time to pay
13 the \$650,000. She would like to know about the status of the Yuba City, California property
14 closing, and states she has learned that the property closed on July 12, which demonstrates that
15 the Trust had cash to tender to Holmes. Holmes' brief does not make any connection between the
16 Yuba City, California property sale and *Ms. Rosales*. However, the court has allowed Holmes to
17 discover text messages between Ms. Rosales and Armstrong for the limited timeframe identified
18 above
19 that discuss any assets of the Trust, and the court will therefore allow Holmes to discover any
20 emails between Ms. Rosales and Armstrong for this same timeframe (May 9, 2022 and August 3,
21 2022) that discuss any assets of the Trust, which would include the Yuba City, California
22 property. If Ms. Rosales did not have any involvement with this real estate transaction, and if she
23 has no communications regarding this asset, then that will be her response.

1 Request for Production No. 4: A copy of all the documents, emails, or texts regarding your
2 acquisition of Gambi's, a Reno, Nevada restaurant.

3 Objection: irrelevant, immaterial, harassing, overbroad, not limited in time or scope, calls for the
4 production of confidential commercial information.

5 Ruling: The objection is sustained. Ms. Rosales represents that she is the owner of Galley, LLC,
6 a restaurant in Northwest Reno, which Armstrong manages. Holmes argues that during
7 Armstrong's deposition, she learned that he sold the Gambi's restaurant to Ms. Rosales. She
8 asserts that this line of inquiry concerns Holmes' position that Armstrong did not have the
9 money to tender to Holmes under the agreement. Holmes does not provide sufficient foundation
10 for the court to conclude the requested information is relevant. For example, she does not state
11 *when* this transaction for sale of the restaurant occurred so as to demonstrate its relevance to the
12 Trust's financial position in or around August 2022. Nor does she provide any specific
13 information linking the restaurant as an asset of the Trust. Moreover, the request is overbroad as
14 it is not limited in time or scope. Finally, this is information that Holmes could have sought in
15 discovery to Armstrong and/or the Trust.

16 Request for Production No. 5: A copy of any wires, checks, or monetary transfers of any kind
17 between you and the Trust regarding your purchase of Gambi's at any time.

18 Objection: irrelevant, immaterial, harassing, overbroad – not limited in time, calls for the
19 production of confidential commercial information, particularly private financial and banking
20 information.

21 Ruling: The objection is sustained for the same reasons asserted with respect to the prior request.

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23

1 The motion to modify the subpoena/for a protective order is granted consistent with these
2 findings, and Ms. Rosales is otherwise compelled to produce the information outlined above that
3 is in her possession, custody, or control.

4 Finally, Holmes' brief mentions the deposition notice and subpoena for Spencer
5 Armstrong (who is Armstrong's son), but there is no motion pending before the court concerning
6 the subpoena to Spencer Armstrong. Holmes' brief also discusses the discovery that the
7 Plaintiffs/Counter-defendants have or have not undertaken and the alleged failure to provide a
8 damages computation or expert witness disclosure, but again, this is irrelevant to Ms. Rosales'
9 subpoena.

10 **III. CONCLUSION**

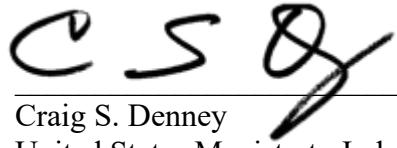
11 To the extent the Trust/Armstrong move to quash the subpoena and/or for a protective
12 order, the motion is **DENIED AS TO THEM** because they do not provide a basis for the
13 conclusion that they are seeking to protect their own interest, but only that of Ms. Rosales.

14 Insofar as the motion requests that the subpoena commanding Ms. Rosales to testify and
15 produce documents be quashed in its entirety, the motion is **DENIED**.

16 The motion is **GRANTED IN PART** consistent with the findings herein insofar as it
17 seeks the modification of the subpoena and/or a protective order

18 **IT IS SO ORDERED.**

19 Dated: February 9, 2024


20 _____
21 Craig S. Denney
22 United States Magistrate Judge
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